

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	
)	
v.)	
)	I.D. Nos. 1911015042 & 2008011758
)	
EMMANUEL HOLIDAY,)	
)	
Defendant.)	

ORDER

Submitted: June 2, 2023

Decided: July 10, 2023

AND NOW TO WIT, this 10th day of July 2023, upon consideration of Emmanuel Holiday (“Defendant”)’s Requests for Modification of Sentence under Superior Court Criminal Rule 35, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On May 21, 2020, Defendant pled guilty to Robbery Second Degree and Conspiracy Second Degree,¹ and was sentenced to a probationary sentence for both charges.²

2. On December 6, 2021, Defendant pled guilty to Carrying a Concealed Deadly Weapon (CCDW), Assault Second Degree, and Resisting

¹ Case Review Plea Hearing, Crim Id. No. 1911015042, D.I. 14.

² Sentence: ASOP Order, Crim Id. No. 1911015042, D.I. 17. Defendant received a sentence of 5 years at Level V suspended for 18 months at Level III; and for Conspiracy Second Degree, 2 years at Level V, suspended for 1 year at Level III. *Id.*

Arrest,³ for which he was immediately sentenced.⁴ As a result of that 2021 plea, Defendant was also found in violation of probation of his 2020 Robbery and Conspiracy convictions.⁵

3. Defendant was again found to have violated the conditions of his probation on July 19, 2022,⁶ and on April 25, 2023.⁷

4. On April 25, 2023, this Court re-sentenced Defendant (April 2023 Sentence).⁸

5. On April 28, 2023, Defendant filed a “Notice of Appeal” of the April 2023 Order in *this* Court.⁹ On May 4, 2023, Defendant also filed a letter asking this Court modify the April 2023 sentence.¹⁰ On May 19, 2023, he then filed another Motion to modify the same April 2023 sentence.¹¹

6. On June 1, 2023, a Violation of Probation report was filed by

³ Jury Trial Calendar: Pled Guilty-Sentenced, Crim Id. No. 2008011758, D.I. 21.

⁴ *Id.* For the CCDW, 2 years at Level V, suspended after 18 months with transitioning levels of probation, including GPS. And for the Assault Second Degree and Resisting Arrest convictions, Defendant received 8 years and 2 years at Level V, respectively, all of which were suspended for Level III probation. *Id.*

⁵ *Id.*

⁶ Sentence: VOP ASOP Order, Crim Id. No. 2008011758, D.I. 28.

⁷ Sentence: VOP ASOP Order, Crim Id. No. 2008011758, D.I. 37.

⁸ This Court re-sentenced Defendant to serve 69 days at Level V (Robbery charge) with the remaining charges to receive concurrent sentences of 6 months at Level IV DOC Discretion, followed by 6 months at Level III GPS. *Id.*

⁹ Def.’s Notice of Appeal, Crim Id. No. 2008011758, D.I. 38.

¹⁰ Def.’s Letter for Modification of Sentence, Crim Id. No. 2008011758, D.I. 39.

¹¹ Def.’s Mot. for Modification of Sentence, Crim Id. No. 2008011758, D.I. 41. This time, Defendant asked the Court to modify his sentence to 3 months of the Road to Recovery program and 3 months of Level IV Work Release followed by 6 months of Level III probation. *Id.*

Defendant's probation officer,¹² for allegations that Defendant assaulted an inmate while at his Level IV placement, causing major injuries and further resisting an officer from placing Defendant in custody.¹³ The next day, Defendant filed a letter asking the Court to send him his status sheet and to resentence him to Level IV Work Release for the last 6 months of his sentence or Level III GPS only.¹⁴

7. On June 6, 2023, Defendant was found to have violated his probation and he was, again, resentedenced by another judicial officer (June 2023 Sentence).¹⁵ On June 14, 2023, Defendant again filed a Notice of Appeal of that June 2023 sentence in this Court.¹⁶

8. When a defendant appeals a Superior Court Criminal decision, he must file a Notice of Appeal with the Supreme Court.¹⁷ This Court does not have jurisdiction to consider his Notice of Appeal,¹⁸ so it must be dismissed.¹⁹

9. Defendant's prior requests for modification of his April 2023

¹² Violation of Probation Report, Crim Id. No. 2008011758, D.I. 45.

¹³ *Id.*

¹⁴ Def.'s Letter, Crim Id. No. 2008011758, D.I. 44.

¹⁵ VOP Hearing, Crim Id. No. 2008011758, D.I. 44.

¹⁶ Crim Id. No. 2008011758, D.I. 47 (attaching the Superior Court's "Advice Regarding Appeal from Violation of Probation," which states that "[i]f you want to appeal the judge's decision that you violated your probation . . . "you must file a Notice of Appeal in *the Delaware Supreme Court* . . . ") (emphasis added).

¹⁷ See Del. Supr. Ct. R. 6.

¹⁸ Del. Const. Art. IV, § 11 ("The Supreme Court shall have jurisdiction . . . [t]o receive appeals from the Superior Court in criminal causes . . .").

¹⁹ See Del. Supr. Ct. Crim. R. 39(h) ("An appeal may be dismissed for lack of jurisdiction . . .").

sentence are moot. His April 2023 sentence was revoked in June 2023 when he was found in violation of his probation and resentenced.

10. Therefore, Defendant's Notice of Appeal and Defendant's Requests to Modify his Sentence in the April 2023 Order are **DISMISSED**. Defendant's request captioned "Notice of Appeal,"²⁰ seeking modification of the June 2023 Order is deferred to the judge who imposed that sentence. No further action will be taken by this Court.

/s/ Vivian L. Medinilla
Vivian L. Medinilla
Judge

oc: Prothonotary
cc: Defendant
Department of Justice
Investigative Services

²⁰ Crim Id. No. 2008011758, D.I. 47.